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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Florence P. Haseltine  
Serial No. : 09/727,593  
Filed : December 4, 2000  
Title : PROVIDING ELECTRONIC ACCESS TO CONSUMER-CUSTOMIZED  
NONVERBAL INFORMATION REGARDING PRODUCTS AND SERVICES

Art Unit : 3625  
Examiner : Robert E. Rhode, Jr.

**MAIL STOP APPEAL BRIEF - PATENTS**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

RESPONSE TO NOTIFICATION OF NON-COMPLIANT APPEAL BRIEF (37 C.F.R. 41.37)

The Notice of Non-Compliant Appeal Brief refers to an Appeal Brief filed on May 11, 2005. Upon Applicant's further review of the above-referenced application, Applicant notes that an Appeal Brief was not filed on May 11, 2005, but an Appeal Brief was filed on November 30, 2004 and a Supplemental Appeal Brief was filed on April 26, 2005. Therefore, the Applicant is unsure as to which Brief the Notice references and hereby submits both the Appeal Brief and the Supplemental Appeal Brief with the additional required items under 37 C.F.R. 41.37(c) in response to the Notice of Non-Compliant Appeal Brief. A copy of the Notice of Non-Compliant Appeal Brief is included.

Please apply any charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

Date: 8/11/05

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BRIEF ON APPEAL

**(1) Real Party in Interest**

The real party in interest is Florence Haseltine.

**(2) Related Appeals and Interferences**

There are no related appeals and interferences.

**(3) Status of Claims**

Rejected Claims

1, 3, 4, 6-18, 21, 23, 24, 26-38, 41, 43, 44, 46-58, and 61-96.

Cancelled Claims

2, 5, 19, 20, 22, 25, 39, 40, 42, 45, 59, and 60.

Claims Appealed

1, 3, 4, 6-18, 21, 23, 24, 26-38, 41, 43, 44, 46-58, and 61-96.

**(4) Status of Amendments**

The amendment filed August 30, 2004 was entered by the advisory action dated November 17, 2004. Initially, as indicated in the advisory action dated October 7, 2004, the August 30<sup>th</sup> amendment was not entered. Applicant's representative, Kevin Greene, contacted Examiner Rhode on October 20, 2004 to discuss the entry of the amendment. Applicant's representative indicated that he believed the amendment should have been entered because it reduced issues for appeal by simply incorporating dependent claims into the independent claims.

The Examiner indicated that he would review the case and re-consider whether to enter the amendment. The Examiner issued a second advisory action, dated October 28, 2004, that still denied entry of the amendment. On approximately November 10, 2004, Applicant's representative contacted Examiner Coggins (the Supervisory Patent Examiner who signed the advisory action) to again discuss the entry of the amendment. After a discussion with Examiner Coggins, it was agreed that the amendment would be entered. The advisory action dated November 17, 2004, entering the amendment, was then issued.

#### **(5) Summary of Claimed Subject Matter**

The subject matter of independent claims 1, 21, 41, 67, 77, and 87 may be employed to allow, for example, a third party to contribute to a consumer's shopping experience without being physically present at the merchant's physical premises. Application, page 2, lines 1-6. For example, a consumer may try on clothing at merchant's retail store. Application, page 7, lines 28-31. The merchant then may take a photograph of the consumer trying on the clothing and load the image onto a merchant system such as a website. Application, page 8, lines 19-25; page 6, lines 10-18. A device that is physically remote from the store, such as a computer executing web browsing software, may be used by a third party to access the merchant website and view the digital photograph so that the third party can see what the clothing looks like on the consumer. Application, page 4, lines 18-21; page 9, lines 1-6.

The third party can then contribute to the shopping experience, e.g., by providing authorization for the purchase of the product, selecting the product to be purchased, or giving the consumer feedback on the product. Application, page 8, lines 9-13. Thus, the consumer can be assisted by third parties during his or her shopping, without the necessity of the third parties being physically present.

More generally, independent claims 1, 21, and 41 are directed to a method, a computer medium or propagated signal, and an apparatus, respectively, for providing a party accessing a merchant system with electronic access to an image of merchandise physically arranged according to a consumer. A consumer is provided with access to physical merchandise at a merchant's physical premises. Application, page 7, lines 24-31. The consumer is allowed to direct the physical arrangement of the physical merchandise at the merchant's physical premises.

Application, page 7, lines 24-31; Fig. 2, element 230. An image of the physical merchandise as physically arranged at the merchant's physical premises according to the consumer is captured and loaded onto a merchant system. Application, page 7, lines 24-31; Fig. 2, element 240. A device, which is physically remote from the merchant's physical premises, is provided with access to the merchant system. Application, page 8, lines 1-13 page 9, lines 1-6; Fig. 2, element 240; Fig. 3, element 340. The party who is operating the device is enabled to access and view the captured image. Application, page 8, lines 1-13 page 9, lines 1-6; Fig. 2, element 250.

Independent claims 67, 77, and 87 are directed to a method, a computer medium or propagated signal, and an apparatus, respectively, for receiving feedback from a party regarding consumer-customized nonverbal information. An electronic version of consumer-customized nonverbal information is collected at a merchant's physical premises. Application, page 7, lines 24-31; Fig. 2, element 240. The electronic version of the consumer-customized nonverbal information is transmitted to a remote site for viewing by a party. Application, page 4, lines 18-23; page 8, lines 1-13; Fig. 2, element 250. Feedback is solicited and received from the party regarding the electronic version of the consumer-customized nonverbal information transmitted to the remote site for viewing by the party. Application, page 4, lines 18-23; page 8, lines 1-13; Fig. 2, element 260; Fig. 3, element 350.

#### **(6) Grounds of Rejection**

Claims 67, 77, and 87 are rejected as anticipated by U.S. Patent No. 5,551,021 (Harada).

Claims 1, 3, 4, 6-18, 21, 23, 24, 26-38, 41, 43, 44, 46-58, and 61-66, 68-76, and 78-96 are rejected as obvious over Harada in view of U.S. Patent No. 6,578,072 (Watanabe).

Claims 1, 21, and 41 were initially rejected as anticipated by Harada and claims 2, 22, and 42 were rejected as obvious over Harada in view of Watanabe. In the response filed August 30, 2004, Applicant incorporated the features of claims 2, 22, and 42 into independent claims 1, 21, and 41, respectively. As described above in section 4 (Status of Amendments), this amendment was entered by the advisory action dated November 17, 2004. However, this advisory action did not contain an explanation of how the amended claims would be rejected. Applicant's representative, Kevin Greene, contacted Examiner Rhode on November 19, 2004 to discuss how the claims would be rejected in light of the entered amendment. Examiner Rhode

indicated that claims 1, 21, and 22 would be rejected for the same reason as claims 2, 22, and 42, respectively, and that the other claims dependent on claims 1, 21, and 41 would be rejected as they were in the office action dated April 29, 2004. Thus, claims 1, 21, and 41, and those claims depending from them, are rejected as obvious over Harada in view of Watanabe.

**(7) Argument**

Rejections under 35 USC 102

The Examiner has not established a *prima facie* case of anticipation with respect to independent claims 67, 77, and 87. To establish a *prima facie* case of anticipation, a single reference must disclose all of the claim elements. MPEP 2131. However, as conceded by the April 29<sup>th</sup> Office Action, Harada does not disclose "receiving feedback from the party," as recited in claims 67, 77, and 87. April 29<sup>th</sup> Office Action, Page 8, Lines 2-18 ("Harada does not specifically disclose and teach . . . receiving feedback from the party" such as "authorization" or a "recommendation for purchase," for example, when "the consumer and party are different entities."). Moreover, as conceded, at least implicitly, in the April 29<sup>th</sup> Office Action, Harada does not disclose or suggest "transmitting the electronic version of the consumer-customized nonverbal information to a remote site for viewing by a party," as recited in independent claims 67, 77, and 87. See April 29<sup>th</sup> Office Action, Page 8, Lines 2-18 ("Harada does not specifically disclose and teach a method, wherein the device is physically remote from the merchant's physical premises.").

Accordingly, Harada does not disclose all of the limitations of independent claims 67, 77, and 87 and, consequently, does not anticipate independent claims 67, 77, and 87, or the claims that depend from them. For at least the foregoing reasons, Applicant requests that the rejections of these claims be reversed.

Rejections Under 35 USC 103

**1. A combination of Harada and Watanabe as suggested by the Examiner would be directly contrary to the teachings of Harada and the intended use of Harada's**

**invention, and therefore, Harada and Watanabe do not render obvious claims 1, 3, 4, 6-18, 21, 23, 24, 26-38, 41, 43, 44, 46-58, and 61-66, 68-76, and 78-96.**

One of skill in the art, upon reading Harada and Watanabe, would not have been motivated to combine the teachings of these references to obtain the subject matter presently claimed in independent claims 1, 21, and 41 (or independent claims 67, 77, and 87)<sup>1</sup>, particularly because doing so would be directly contrary to the intended manner of using Harada's invention and, therefore, directly contrary to the teachings of Harada.

Harada describes a customer management system in which digital photographs of a customer trying on clothes are stored in a customer management system for future use by the store employees. *Only* retail store employees, *located in the store*, have access to the digital photographs stored in the Harada customer management system. Accordingly, the Examiner concedes that Harada does not describe providing a device that is physically remote from the merchant site with access to the merchant system (claims 1, 21, and 41), transmitting the electronic image to a remote site for viewing by a party (claims 67, 77, and 87), or soliciting and receiving feedback from the party (claims 14, 34, 54, 67, 77, and 87). Office Action, Page 8, Lines 2-18 ("Harada does not specifically disclose and teach a method, wherein the device is physically remote from the merchant's physical premises" or "receiving feedback from the party").

In an attempt to establish a *prima facie* case of obviousness with respect to claims 1, 21, and 41, the Examiner therefore relies on Watanabe for these features, contending that one of skill in the art would have been motivated to incorporate features of Watanabe into Harada to allow the consumer, as well as others outside of the merchant site, to view a captured image stored on the merchant system. Office Action, Page 12, Lines 17-18.

Applicant disagrees. Harada and Watanabe, either singly or in combination, do not render obvious the subject matter of claims 1, 21, and 41. Nor do they render obvious the subject matter of claims 67, 77, and 87.

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<sup>1</sup> While the Examiner did not reject claims 67, 77, and 87 as obvious over Harada in view of Watanabe, Applicant will also address these claims in an attempt to expedite prosecution of this case, particularly because the Examiner has used the combination of Harada and Watanabe to reject claims dependent 14, 34 and 54, which are dependent claims reciting features similar to those recited by claims 67, 77 and 87.

To establish a *prima facie* case of obviousness, "there must be some suggestion or motivation . . . to modify the reference." MPEP 2143. However, in the present case, there is no motivation because the Examiner's proposed modification of Harada's invention based on Watanabe is directly contrary to the teachings of Harada.

When Harada is considered in full, it is clear that the intended manner of using Harada's customer management system includes keeping the stored photographs a secret from the customer. Incorporating features that allow the customer, as well as others, to view the stored photographs of the customer trying on clothes would destroy this secrecy and, therefore, would be directly contrary to the teachings of Harada.

Specifically, in all of the usage scenarios described by Harada, except one, the electronic image in the digital camera is not downloaded to the customer management system until "*after* the customer leaves the shop." Harada, Col. 9, Line 11-12; Col. 9, Line 55-56; Col. 10, Line 28-29 (emphasis added). Thus, Harada explicitly prevents the customer from viewing the photograph stored in data storage section 22, or even of knowing about its existence, and systematically describes doing so.

The one exception to this is when the customer is coming to the store to decide on some custom made clothing. The employee photographs the customer, but not any merchandise. That is, the picture is simply of the customer, not the customer trying on clothing. Harada, Col. 10, Line 53-62. This image of the customer is combined with some computerized images to show the customer what he or she would look like wearing differently designed clothing.

Even in this scenario, however, Harada teaches that it is desirable to prevent the customer from knowing that previous photographs of the customer trying on clothing has been stored in the customer management system: "As the customer is shown only the image of the customer photographed in the step S126, therefore, the customer *cannot know* that the images photographed at other timings are utilized in customer management." Harada, Col. 10, Lines 62-65 (emphasis added).

From this, it is clear that Harada, when considered as a whole, actually teaches away from the proposed modification suggested by the Examiner in attempting to meet the presently pending claims, specifically, a modification of Harada's customer management system that allows the customer, as well as others outside the store, to view the images stored in the

customer management system. Accordingly, even assuming *arguendo* that Watanabe discloses providing access to a device that is physically remote from the merchant site, transmitting the electronic image to a remote site for viewing by a party, or receiving feedback from the party, a combination of Harada with Watanabe to achieve a system in which the customer, as well as others outside the store, are capable of viewing the stored images is improper, as it is inconsistent with the teachings of Harada against the customer knowing that the photograph is stored in the customer management system.

Thus, one of skill in the art, reading Harada and Watanabe, would not have been motivated to incorporate the aspects of Watanabe suggested by the Examiner because it would defeat the purposes and goals of Harada, and is directly contrary to the teachings of Harada. Harada and Watanabe therefore fail to render obvious independent claims 1, 21, 41, 67, 77, and 87, or the claims that depend from them. Accordingly, Applicant requests that the rejections of claims 1, 21, and 41, and the claims that depend from them, be reversed.

**2. Harada and Watanabe fail to disclose all of the claim limitations of claims 15, 16, 35, 36, 55, 56, 68, 69, 78, 79, 88, and 89.**

Harada and Watanabe do not render obvious claims 15, 16, 35, 36, 55, 56, 68, 69, 78, 79, 88, and 89 because neither Harada or Watanabe disclose feedback that includes an authorization for purchase of physical merchandise or a recommendation for purchase, as recited in these claims.

The Examiner concedes that Harada does not disclose the features of claims 15, 16, 35, 36, 55, 56, 68, 69, 78, 79, 88, and 89. Office Action, Page 8, Lines 2-18 (“Harada does not specifically disclose and teach a method . . . wherein the feedback includes an authorization for purchase of the physical merchandise and wherein the feedback includes a recommendation for purchase.”). In an attempt to establish a *prima facie* case of obviousness with respect to claims 1, 21, and 41, the Examiner relies on Watanabe for these features.

However, Watanabe does not disclose these features.

“To establish a *prima facie* case of obviousness, [the combined references] must teach or suggest all the claim limitations.” MPEP 2143. As Watanabe does not disclose feedback that includes an authorization for purchase of physical merchandise or a recommendation for



purchase, Harada and Watanabe do not render claims 15, 16, 35, 36, 55, 56, 68, 69, 78, 79, 88, and 89 obvious.

Watanabe is directed to providing a virtual photo album on a website and allowing particular users to attach comments to the pictures in the virtual photo album "in the same manner as writing a comment on a paper album being circulated." Watanabe, Col. 5, Lines 2-3. When Watanabe is reviewed fully, it can be seen that Watanabe does not describe purchasing merchandise, much less receiving an authorization for a purchase of physical merchandise or a recommendation for purchase. Accordingly, the description of the comments in Watanabe do not disclose or suggest feedback that includes an authorization for purchase of physical merchandise or a recommendation for purchase.

The Examiner, at least implicitly, acknowledges that Watanabe does not disclose or suggest feedback that includes an authorization for purchase of physical merchandise or a recommendation for purchase, but contends that such recitations do not have patentable weight. Office Action, Page 11, Lines 1-11 ("Please note that the recitations 'wherein the feedback includes authorization for purchase of the physical merchandise' and 'wherein the feedback includes a recommendation for purchase', such recitation [sic] are given little patentable weight because it imparts no structural or functional specificity which serves to patentably distinguish the instant invention from the other 'feedback' already disclosed by Watanabe").

However, "[a]ll words in a claim must be considered in judging the patentability of [the] claim against the prior art." MPEP 2143.03 (citing *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970)). As such, the Examiner can not ignore this claim language that defines features not disclosed or suggested by Harada or Watanabe.

Harada and Watanabe accordingly fail to establish a *prima facie* case of obviousness when all of the words in claims 15, 16, 35, 36, 55, 56, 68, 69, 78, 79, 88, and 89 are considered. Consequently, the rejections of claims 15, 16, 35, 36, 55, 56, 68, 69, 78, 79, 88, and 89 should be reversed.

The brief fee of \$170 is enclosed. Please apply any other charges or credits to Deposit Account No. 06-1050.

Applicant : Florence P. Haseltine  
Serial No. : 09/727,593  
Filed : December 4, 2000  
Page : 9 of 24

Attorney's Docket No.: 12000-002001

Respectfully submitted,

Date: \_\_\_\_\_

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### **Appendix of Claims**

1. A method for providing a party accessing a merchant system with electronic access to an image of merchandise physically arranged according to a consumer, the method comprising:

providing a consumer with access to physical merchandise at a merchant's physical premises;

allowing the consumer to direct physical arrangement of the physical merchandise at the merchant's physical premises;

capturing an image of the physical merchandise as physically arranged at the merchant's physical premises according to the consumer;

loading the captured image onto a merchant system;

providing a device with access to the merchant system, wherein the device is physically remote from the merchant's physical premises; and

enabling a party who is operating the device to access and view the captured image.

2. (Cancelled).

3. The method of claim 2, wherein the captured image includes one or more still photos.

4. The method of claim 2, wherein the captured image includes a video clip.

5. (Cancelled).

6. The method of claim 1, wherein the captured image reflects a relationship between the physical merchandise and the consumer.

7. The method of claim 6, wherein the physical merchandise includes at least one clothing garment and the image reflects the consumer wearing the clothing garment.

8. The method of claim 6, wherein the physical merchandise includes at least one tool, and the image reflects the consumer operating the tool.

9. The method of claim 1, wherein enabling a party who is operating the device to access and view the captured image comprises enabling the party who is operating the device to access and view the captured image in real time.

10. The method of claim 1, further comprising storing the captured image in the merchant system for later access by the device.

11. The method of claim 1, wherein enabling a party who is operating the device to access and view the captured image comprises authenticating the party and denying access by the device when the party is not authenticated properly.

12. The method of claim 11, wherein authenticating includes receiving authenticating information from the party and comparing the authenticating information with information provided by the consumer.

13. The method of claim 1, wherein enabling a party who is operating the device to access and view the captured image comprises using the Internet as a communication medium to transmit the captured image from the merchant system to the device.

14. The method of claim 1, further comprising receiving feedback from the party.

15. The method of claim 14, wherein the feedback includes authorization for purchase of the physical merchandise.

16. The method of claim 14, wherein the feedback includes a recommendation for purchase.

17. The method of claim 14, wherein the consumer and party are a single entity.

18. The method of claim 1, wherein the consumer and party are different entities.

19-20. (Cancelled)

21. A computer medium or propagated signal storing a computer program capable of providing a party accessing a merchant system with electronic access to an image of merchandise physically arranged according to a consumer, wherein the consumer is provided with access to physical merchandise at a merchant's physical premises and the consumer is allowed to direct physical arrangement of the physical merchandise at the merchant's physical premises, the program comprising:

a capturing code segment to capture an image of the physical merchandise as physically arranged at the merchant's physical premises according to the consumer;

a loading code segment to load the captured image onto a merchant system;

a providing code segment to provide a device with access to the merchant system, wherein the device is physically remote from the merchant's physical premises; and

an enabling code segment to enable a party who is operating the device to access and view the captured image.

22. (Cancelled).

23. The medium of claim 22, wherein the captured image includes one or more still photos.

24. The medium of claim 22, wherein the captured image includes a video clip.

25. (Cancelled).

26. The medium of claim 21, wherein the image reflects a relationship between the physical merchandise and the consumer.

27. The medium of claim 26, wherein the physical merchandise includes at least one clothing garment and the image reflects the consumer wearing the clothing garment.

28. The medium of claim 26, wherein the physical merchandise includes at least one tool, and the image reflects the consumer operating the tool.

29. The medium of claim 21, wherein the enabling code segment includes code to enable a party who is operating the device to access and view the captured image in real time.

30. The medium of claim 21, further comprising a storing code segment for storing the image in the merchant system for later access by the device.

31. The medium of claim 21, wherein the enabling code segment includes an authenticating code segment for authenticating the party and denying access by the device when the party is not authenticated properly.

32. The medium of claim 31, wherein the authenticating code segment includes a code segment for receiving authenticating information from the party and comparing the authenticating information with information provided by the consumer.

33. The medium of claim 31, wherein the enabling code segment includes a code segment for using the Internet as a communication medium to transmit the captured image from the merchant system to the device.

34. The medium of claim 31, further comprising a code segment for receiving feedback from the party.

35. The medium of claim 34, wherein the feedback includes authorization for purchase of the physical merchandise.

36. The medium of claim 34, wherein the feedback includes a recommendation for purchase.

37. The medium of claim 34, wherein the consumer and party are a single entity.

38. The medium of claim 21, wherein the consumer and party are different entities.

39-40. (Cancelled).

41. An apparatus capable of providing a party accessing a merchant system with electronic access to an image of merchandise physically arranged according to a consumer, wherein the consumer is provided with access to physical merchandise at a merchant's physical premises and the consumer is allowed to direct physical arrangement of the physical merchandise at the merchant's physical premises, the apparatus comprising:

a capturing device to capture an image of the physical merchandise as physically arranged at the merchant's physical premises according to the consumer;

a loading device to load the captured image onto a merchant system;

a providing device to provide a device with access to the merchant system, wherein the device is physically remote from the merchant's physical premises; and

an enabling device to enable a party who is operating the device to access and view the captured image.

42. (Cancelled).

43. The apparatus of claim 42, wherein the captured image includes one or more still photos.

44. The apparatus of claim 42, wherein the captured image includes a video clip.

45. (Cancelled).

46. The apparatus of claim 41, wherein the image reflects a relationship between the physical merchandise and the consumer.

47. The apparatus of claim 46, wherein the physical merchandise includes at least one clothing garment and the image reflects the consumer wearing the clothing garment.

48. The apparatus of claim 46, wherein the physical merchandise includes at least one tool, and the image reflects the consumer operating the tool.

49. The apparatus of claim 41, wherein the enabling device includes a component to enable the party who is operating the device to access and view the captured image in real time.

50. The apparatus of claim 41, further comprising a storing device to store the image for later access by the device.

51. The apparatus of claim 41, wherein the enabling device includes an authenticating component to authenticate the party and deny access by the device when the party is not authenticated properly.

52. The apparatus of claim 51, wherein the authenticating component includes a component to receive authenticating information from the party and compare the authenticating information with information provided by the consumer.

53. The apparatus of claim 51, wherein the enabling device includes a component to use the Internet as a communication medium to transmit the captured image from the merchant system to the device.



54. The apparatus of claim 51, further comprising a feedback device to receive feedback from the party.

55. The apparatus of claim 54, wherein the feedback includes authorization for purchase of the physical merchandise.

56. The apparatus of claim 54, wherein the feedback includes a recommendation for purchase.

57. The apparatus of claim 54, wherein the consumer and party are a single entity.

58. The apparatus of claim 41, wherein the consumer and party are different entities.

59-60. (Cancelled)

61. The method of claim 1, wherein allowing the consumer to direct physical arrangement of the physical merchandise comprises allowing the consumer to provide instructions to a third party regarding the physical arrangement of the physical merchandise.

62. The method of claim 1, wherein allowing the consumer to direct physical arrangement of the physical merchandise comprises allowing the consumer to physically interact with the physical merchandise.

63. The method of claim 62, wherein capturing an image of the physical merchandise as physically arranged according to the consumer comprises capturing an image of the consumer physically interacting with the physical merchandise.

64. The method of claim 62, wherein allowing the consumer to physically interact with the physical merchandise comprises allowing the consumer to wear the physical merchandise.

65. The medium of claim 21, wherein the consumer being allowed to direct physical arrangement of the physical merchandise comprises the consumer being allowed to physically interact with the physical merchandise, and wherein the capturing code segment comprises a code segment to capture an image of the consumer physically interacting with the physical merchandise.

66. The apparatus of claim 41, wherein the consumer being allowed to direct physical arrangement of the physical merchandise comprises the consumer being allowed to physically interact with the physical merchandise, and wherein the capturing device comprises a device to capture an image of the consumer physically interacting with the physical merchandise.

67. A method for receiving feedback from a party regarding consumer-customized nonverbal information, the method comprising:

collecting, at a merchant's physical premises, an electronic version of consumer-customized nonverbal information;

transmitting the electronic version of the consumer-customized nonverbal information to a remote site for viewing by a party;

soliciting feedback from the party regarding the electronic version of the consumer-customized nonverbal information transmitted to the remote site for viewing by the party; and

receiving feedback from the party regarding the electronic version of the consumer-customized nonverbal information transmitted to the remote site for viewing by the party.

68. The method of claim 67, wherein the feedback includes authorization for purchase of the physical merchandise.

69. The method of claim 67, wherein the feedback includes a recommendation for purchase.

70. The method of claim 67, wherein receiving feedback from the party regarding the electronic version of the consumer-customized nonverbal information transmitted to the remote site for viewing by the party comprises receiving the feedback at the merchant's physical premises.

71. The method of claim 67, wherein the consumer-customized nonverbal information comprises physical merchandise physically arranged according by a consumer, the method further comprising:

providing the consumer with the physical merchandise at a merchant's physical premises;  
and

allowing the consumer to physically arrange the physical merchandise.

72. The method of claim 71, wherein collecting an electronic version of consumer-customized nonverbal information comprises capturing an image of the physical merchandise as physically arranged by the consumer.

73. The method of claim 67, further comprising allowing the consumer to designate the party from whom feedback is solicited.

74. The method of claim 67, further comprising collecting information from the consumer that identifies the party.

75. The method of claim 67, wherein the consumer-customized nonverbal information comprises physical merchandise physically arranged according to a consumer, the method further comprising:

receiving instructions from a consumer; and

physically arranging the physical merchandise according to the received instructions.

76. The method of claim 75, wherein receiving instructions from a consumer comprises receiving the instructions at the merchant's physical premises from the consumer located a site physically remote from the merchant's premises.

77. A computer medium or propagated signal storing a computer program capable of receiving feedback from a party regarding consumer-customized nonverbal information, the program comprising:

- a collecting code segment to collect, at a merchant's physical premises, an electronic version of consumer-customized nonverbal information;

- a transmitting code segment to transmit the electronic version of the consumer-customized nonverbal information to a remote site for viewing by a party;

- a soliciting code segment to enable solicitation of feedback from the party regarding the electronic version of the consumer-customized nonverbal information transmitted to the remote site for viewing by the party; and

- a receiving code segment to receive feedback from the party regarding the electronic version of the consumer-customized nonverbal information transmitted to the remote site for viewing by the party.

78. The program of claim 77, wherein the feedback includes authorization for purchase of the physical merchandise.

79. The program of claim 77, wherein the feedback includes a recommendation for purchase.

80. The program of claim 77, wherein the receiving code segment comprises a code segment to receive the feedback at the merchant's physical premises.

81. The program of claim 77, wherein the consumer-customized nonverbal information comprises physical merchandise physically arranged according to a consumer.

82. The program of claim 81, wherein the collecting code segment comprises a code segment to capture an image of the physical merchandise as physically arranged according to the consumer.

83. The program of claim 77, further comprising a code segment to allow the consumer to designate the party from whom feedback is solicited.

84. The program of claim 77, further comprising a code segment to collect information from the consumer that identifies the party.

85. The program of claim 77, wherein the consumer-customized nonverbal information comprises physical merchandise physically arranged according to a consumer, the program further comprising a code segment to receive instructions from a consumer such that the physical merchandise can be physically arranged according to the received instructions.

86. The program of claim 85, wherein the code segment to receive instructions from a consumer comprises a code segment to receive the instructions at the merchant's physical premises from the consumer located a site physically remote from the merchant's premises.

87. An apparatus capable of receiving feedback from a party regarding consumer-customized nonverbal information, the apparatus comprising:

a collecting device to collect, at a merchant's physical premises, an electronic version of consumer-customized nonverbal information;

a transmitting device to transmit the electronic version of the consumer-customized nonverbal information to a remote site for viewing by a party;

a soliciting device to enable solicitation of feedback from the party regarding the electronic version of the consumer-customized nonverbal information transmitted to the remote site for viewing by the party; and

a receiving device to receive feedback from the party regarding the electronic version of the consumer-customized nonverbal information transmitted to the remote site for viewing by the party.

88. The apparatus of claim 87, wherein the feedback includes authorization for purchase of the physical merchandise.

89. The apparatus of claim 87, wherein the feedback includes a recommendation for purchase.

90. The apparatus of claim 87, wherein the receiving device comprises a device to receive the feedback at the merchant's physical premises.

91. The apparatus of claim 87, wherein the consumer-customized nonverbal information comprises physical merchandise physically arranged according to a consumer.

92. The apparatus of claim 91, wherein the collecting device comprises a device to capture an image of the physical merchandise as physically arranged according to the consumer.

93. The apparatus of claim 87, further comprising a device to allow the consumer to designate the party from whom feedback is solicited.

94. The apparatus of claim 87, further comprising a device to collect information from the consumer that identifies the party.

95. The apparatus of claim 87, wherein the consumer-customized nonverbal information comprises physical merchandise physically arranged according to a consumer, the apparatus further comprising a device to receive instructions from a consumer such that the physical merchandise can be physically arranged according to the received instructions.

96. The program of claim 95, wherein the device to receive instructions from a consumer comprises a device to receive the instructions at the merchant's physical premises from the consumer located a site physically remote from the merchant's premises.

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## **Evidence Appendix**

No copies required.



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### **Related Proceedings Appendix**

No copies required.



THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Florence P. Haseltine                      Art Unit : 3625  
Serial No. : 09/727,593                                      Examiner : Robert E. Rhode, Jr.  
Filed : December 4, 2000  
Title : PROVIDING ELECTRONIC ACCESS TO CONSUMER-CUSTOMIZED  
NONVERBAL INFORMATION REGARDING PRODUCTS AND SERVICES

**Mail Stop Appeal Brief - Patents**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

SUPPLEMENTAL BRIEF ON APPEAL

**(1) Real Party in Interest**

The real party in interest is Florence Haseltine.

**(2) Related Appeals and Interferences**

There are no related appeals and interferences.

**(3) Status of Claims**

Applicant incorporates by reference the status of claims included in the appeal brief filed November 30, 2004, which indicates:

Rejected Claims

1, 3, 4, 6-18, 21, 23, 24, 26-38, 41, 43, 44, 46-58, and 61-96.

Cancelled Claims

2, 5, 19, 20, 22, 25, 39, 40, 42, 45, 59, and 60.

Claims Appealed

1, 3, 4, 6-18, 21, 23, 24, 26-38, 41, 43, 44, 46-58, and 61-96.

Applicant notes that the Office Action dated January 26, 2005 indicates that claim 22 is pending; however, claim 22 has been cancelled.

**(4) Status of Amendments**

Applicant incorporates by reference the status of amendments included in the appeal brief filed November 30, 2004, which indicates that the amendment filed August 30, 2004 was entered by the advisory action dated November 17, 2004. No amendments have been filed since then.

**(5) Summary of Claimed Subject Matter**

Applicant incorporates by reference the summary of claimed subject matter included in the appeal brief filed November 30, 2004, which states:

The subject matter of independent claims 1, 21, 41, 67, 77, and 87 may be employed to allow, for example, a third party to contribute to a consumer's shopping experience without being physically present at the merchant's physical premises. Application, page 2, lines 1-6. For example, a consumer may try on clothing at merchant's retail store. Application, page 7, lines 28-31. The merchant then may take a photograph of the consumer trying on the clothing and load the image onto a merchant system such as a website. Application, page 8, lines 19-25; page 6, lines 10-18. A device that is physically remote from the store, such as a computer executing web browsing software, may be used by a third party to access the merchant website and view the digital photograph so that the third party can see what the clothing looks like on the consumer. Application, page 4, lines 18-21; page 9, lines 1-6.

The third party can then contribute to the shopping experience, e.g., by providing authorization for the purchase of the product, selecting the product to be purchased, or giving the consumer feedback on the product. Application, page 8, lines 9-13. Thus, the consumer can be assisted by third parties during his or her shopping, without the necessity of the third parties being physically present.

More generally, independent claims 1, 21, and 41 are directed to a method, a computer medium or propagated signal, and an apparatus, respectively, for providing a party accessing a merchant system with electronic access to an image of merchandise physically arranged according to a consumer. A consumer is provided with access to physical merchandise at a merchant's physical premises. Application, page 7, lines 24-31. The consumer is allowed to direct the physical arrangement of the physical merchandise at the merchant's physical premises. Application, page 7, lines 24-31; Fig. 2, element 230. An image of the physical merchandise as physically arranged at the merchant's physical premises according to the consumer is captured

and loaded onto a merchant system. Application, page 7, lines 24-31; Fig. 2, element 240. A device, which is physically remote from the merchant's physical premises, is provided with access to the merchant system. Application, page 8, lines 1-13 page 9, lines 1-6; Fig. 2, element 240; Fig. 3, element 340. The party who is operating the device is enabled to access and view the captured image. Application, page 8, lines 1-13 page 9, lines 1-6; Fig. 2, element 250.

Independent claims 67, 77, and 87 are directed to a method, a computer medium or propagated signal, and an apparatus, respectively, for receiving feedback from a party regarding consumer-customized nonverbal information. An electronic version of consumer-customized nonverbal information is collected at a merchant's physical premises. Application, page 7, lines 24-31; Fig. 2, element 240. The electronic version of the consumer-customized nonverbal information is transmitted to a remote site for viewing by a party. Application, page 4, lines 18-23; page 8, lines 1-13; Fig. 2, element 250. Feedback is solicited and received from the party regarding the electronic version of the consumer-customized nonverbal information transmitted to the remote site for viewing by the party. Application, page 4, lines 18-23; page 8, lines 1-13; Fig. 2, element 260; Fig. 3, element 350.

#### **(6) Grounds of Rejection**

Claims 1, 3, 4, 6-18, 21, 23, 24, 26-38, 41, 43, 44, 46-58, and 61-96 are rejected as obvious over U.S. Patent No. 5,551,021 (Harada) in view of U.S. Patent No. 6,578,072 (Watanabe)

#### **(7) Argument**

The January 26<sup>th</sup> Office Action removes the rejection of claims 67, 77, and 87 as anticipated by Harada and, instead, rejects those claims as obvious over Harada in view of Watanabe. The rejections of all other pending claims, and rationale provided in support of those rejections remain the same as in the April 29<sup>th</sup> Office Action.

Even though the January 26<sup>th</sup> Office Action changes the rejection of claims 67, 77, and 87 to an obviousness rejection, the rejection of these claims as obvious was addressed in the November 30<sup>th</sup> appeal brief. While the April 29<sup>th</sup> Office Action had not rejected claims 67, 77, and 87 as obvious over Harada in view of Watanabe, Applicant addressed the obviousness of

these claims in the November 30<sup>th</sup> appeal brief in an attempt to expedite prosecution of this case, particularly because the Examiner had used the combination of Harada and Watanabe to reject claims 14, 34 and 54, which are dependent claims reciting features similar to those recited by claims 67, 77 and 87.

The January 26<sup>th</sup> Office Action now uses Harada and Watanabe to reject claims 67, 77, and 87 as obvious based on similar rationale as used in the April 29<sup>th</sup> Office Action to reject dependent claims 14, 34, and 54. Accordingly, all issues raised in the November 30<sup>th</sup> appeal brief with respect to the obviousness of claims 67, 77, and 87, in addition to the obviousness of the other pending claims, is still considered to be relevant. As such, Applicant incorporates by reference the arguments with respect to the rejections under 35 USC 103 presented in the November 30<sup>th</sup> appeal brief, namely, that (1) none of the claims are rendered obvious by Harada and Watanabe because the combination of the two would be contrary to the teachings of Harada and, therefore, there is no motivation to combine the two; and (2) Harada and Watanabe fail to disclose all of the claim limitations of claims 15, 16, 35, 36, 55, 56, 68, 69, 78, 79, 88, and 89 and, therefore, even if combination of the two is proper, such a combination does not render those claims obvious.

This brief supplements the November 30<sup>th</sup> appeal brief by addressing two items from the January 26<sup>th</sup> Office Action. First, this brief addresses the specific motivation to combine Harada and Watanabe described by the January 26<sup>th</sup> Office Action. Second, this brief addresses the points raised in the Response to Arguments included in the January 26<sup>th</sup> Office Action.

#### **1. The Obviousness Rejections Impermissibly Use Applicant's Disclosure To Provide the Motivation to Combine Harada and Watanabe**

The motivation to combine described in the January 26<sup>th</sup> Office Action is not present in the prior art and, therefore, the Office Action is impermissibly using Applicant's disclosure to provide the motivation to combine. To establish a *prima facie* case of obviousness, there must be a motivation or suggestion to combine or modify the references to obtain the claimed subject matter. See MPEP 2142 (citing *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991)). This motivation must be in the prior art, and not taken from the Applicant's disclosure. *Id.* In

the present case, neither Harada or Watanabe provide the motivation relied on in the Office Action. Rather, the motivation relied upon is that given by Applicant's disclosure.

The January 26<sup>th</sup> Office Action provides the following as the motivation to combine Harada and Watanabe:

Harada discloses method, medium and apparatus a merchant method and system, which discloses capturing of an image, loading a captured image and allowing a device access and viewing of captured images (Abstract). Watanabe in turn discloses a method, medium and apparatus to remotely access and to view captured images (Figures 1-6). Therefore, one of ordinary skill in the art would have been motivated to combine Harada with Watanabe in order to have a method, medium and apparatus disclosing the capturing of an image of a consumer with tried on merchandise, loading the captured image and allowing device both local and remote access an viewing of captured images. In this manner, the consumer as well as others can view the captured image of the consumer. Thereby, the method and system will allow feedback from other parties that the consumer values and thereby ensure that the nonverbal information is the best suited for them as well as storing for future reference and approval if required. Moreover, this online collaboration will ensure that the purchase is most appropriate and thereby increase the consumer's satisfaction with the purchase. In turn, the increased satisfaction of the consumer will increase the probability that they will return for additional purchases as well as recommend the site/store to others.

January 26<sup>th</sup> Office Action, Page 5, Line 15 to Page 6, Line 10 (emphasis added). The underlined portion appears to indicate that one of skill in the art would be motivated to combine Harada and Watanabe to allow others to remotely view the captured image stored in the customer management system because such a combination would allow the consumer to obtain feedback about whether the merchandise is best suited for them.

However, Harada does not describe or suggest that consumers as well as others should be able to view the stored image of arranged physical merchandise or other consumer customized non-verbal information, nor does Harada describe or suggest that a party remote from the merchant site should be able to provide feedback so that a customer can insure the physical merchandise or other consumer customized non-verbal information is appropriate for the customer. In fact, as discussed in the arguments presented in the November 30<sup>th</sup> appeal brief and discussed below, Harada seeks to keep the stored digital image a secret from the consumer. Only retail store employees, located in the store, have access to the digital photographs stored in the

Harada customer management system. Therefore, Harada does not describe or suggest that parties remote from the merchant site should be able to view the stored images or provide feedback.

Watanabe does not even describe or suggest pictures of consumer customized non-verbal information or pictures of physical merchandise as physically arranged by a consumer. Nor does Watanabe describe or suggest that a party remote from a merchant site should be able to view pictures of physical merchandise as arranged by a consumer or be able to provide feedback on such merchandise.

Accordingly, the desirability of allowing others remote from the merchant site to view captured images of physical merchandise as arranged by the customer or to give feedback is only provided in Applicant's specification (see, e.g., Summary), and is not present in Harada or Watanabe. As such, the January 26<sup>th</sup> Office Action fails to establish a *prima facie* case of obviousness.

## **2. Response to Arguments in January 26<sup>th</sup> Office Action**

The Response to Arguments in the January 26<sup>th</sup> Office Action attempts to make three points: (A) that Harada does not teach away from the combination of Harada and Watanabe because Harada does not teach keeping photographs a secret from the consumer; (B) that Harada teaches transmitting the digital photographs by CD-ROM, and, therefore, suggests transmitting the digital photographs over a network for viewing by a party remote from the merchant site; and (C) that Watanabe teaches receiving and soliciting feedback that includes an authorization for purchase. Each of these items are addressed in turn below.

### **A. Harada seeks to keep the stored photograph a secret from the consumer and, therefore, Harada teaches away from a combination of Harada and Watanabe**

In the November 30<sup>th</sup> appeal brief, Applicant demonstrated that the combination of Harada and Watanabe goes against the teachings of Harada because Harada seeks to keep the digital photograph stored in the customer management system a secret from the consumer. November 30<sup>th</sup> Appeal Brief, Pages 4-7. The January 26<sup>th</sup> Office Action attempts to respond by asserting that Harada fairly suggests the customer awareness of the digital photographs being

stored in a customer management system. The January 26<sup>th</sup> Office Action attempts to support this contention of customer awareness of the digital photographs being stored in the customer management system based on two points: (1) a copy of the photograph is given to the customer, and (2) Harada discloses displaying photographs of the customer during house calls (referring to Col. 6, lines 3-17 and Figure 1). January 26<sup>th</sup> Office Action, page 13, lines 10-13. Applicant disagrees with this assertion because (1) Harada provides a copy of the photograph to the consumer but prevents the consumer from knowing the photograph is downloaded and stored in the customer management system; and (2) Harada does not disclose that photographs of customers are shown during house calls.

More particularly, with regard to (1), Harada discloses printing a copy of the photograph showing the customer trying on clothing and providing a print of the photograph to the customer. To do so, the camera is connected to a video printer (not the customer management system). Harada, Col. 4, Lines 5-9; Col. 8, Lines 55-58; Col. 9, Lines 44-47; Col. 10, Lines 21-24. However, just because a customer is provided with a print of a picture does not mean that the customer is aware that the digital photograph will then be downloaded from the camera to the customer management system. In fact, Harada systematically prints out the photograph before downloading the photograph to the customer management system and then waits until the customer leaves before downloading the photograph to the customer management system. More specifically, as described in the November 30<sup>th</sup> appeal brief, in all of the usage scenarios described by Harada, except one, the electronic image in the digital camera is not downloaded to the customer management system until “after the customer leaves the shop.” Harada, Col. 9, Line 11-12; Col. 9, Line 55-56; Col. 10, Line 28-29 (emphasis added). Thus, even though Harada makes the customer aware that a photograph has been taken, Harada explicitly prevents the customer from knowing the photograph is downloaded and stored in the customer management system.

The one exception to this is when the customer is coming to the store to decide on some custom made clothing. The employee photographs the customer, but not any merchandise. That is, the picture is simply of the customer, not the customer trying on clothing. Harada, Col. 10, Line 53-62. In this case, Harada teaches techniques to be sure “the customer cannot know that the images photographed at other timings are utilized in customer management.” Harada, Col.



10, Lines 62-65 (emphasis added). Specifically, to prevent the customer of knowing about the images from other timings, Harada teaches that the customer should only be shown the picture customer without merchandise. *Id.*

Accordingly, while Harada may not keep the taking of the photographs a secret, Harada does indeed keep the digital photograph loaded into the customer management system a secret from the customer. Because Harada seeks to keep the stored digital photographs a secret from the consumer, Harada can not suggest incorporating features that allow the customer, as well as others, to view the digital photographs of the customer trying on clothes that are loaded into the customer management system. Doing so would destroy the secrecy of such digital photographs and, therefore, would be directly contrary to the teachings of Harada.

With respect to (2), the assertion in the January 26<sup>th</sup> Office Action is simply incorrect. When a store employee makes a house call, the employee does not bring photographs of a customer wearing clothing. Rather, as is made clear from the sentences preceding the section cited in the January 26<sup>th</sup> Office Action, all that Harada discloses in such situations is that the store employee brings photographs of clothing available for sale. Specifically, col. 5, line 55 to col. 6, line 6 (emphasis added) reads as follows:

The recording medium, such as the memory card 12 or compact HD 16, is installed in a house-to-house sales tool 48. The card camera in the image generator 10 may be used directly as this tool 48. That is, image data electronically stored in the installed recording medium may be displayed on a small color display like a color liquid crystal display or the card camera may be connected to a color video printer or the like as needed to print out the image data to help explain popular merchandise in a customer's house, another sales company, a retail shop or the like. Assuming that there are top ten well-selling clothes and information thereon are stored and organized in the data storage section 22, then the mobility is apparently improved significantly if the images of those clothes are saved on a recording medium, such as the memory card 12, and the salesman or saleswoman brings the recording medium and the card camera along than if the salesperson actually brings the clothes along. The house-to-house sales tool 48 may be a compact and light computer or a so-called notebook computer, as well as the card camera.

As can be seen, this section simply describes storing images of clothing to be shown to a customer, not images of the customer trying on clothes. Accordingly, this section can not

suggest that the customer is made aware of digital photographs of the customer trying on clothing stored in the customer management system.

Therefore, contrary to the assertions in the January 26<sup>th</sup> Office Action, Harada specifically teaches that the digital photographs stored in the customer management system are kept a secret from the customer. Accordingly, as described in the November 30<sup>th</sup> appeal brief, incorporating features from Watanabe in the manner suggested by the Office Action would be directly contrary to these teachings of Harada.

B. Harada teaches backing up the photographs on CD-ROM, not using a CD-ROM to transfer the photographs to a remote location for viewing by a party at the remote location

The January 26<sup>th</sup> Office Action asserts that Harada discloses transferring the digital photographs using CD-ROMs and, therefore, suggests transferring the photographs over a network to a remote site for viewing by a remote party. January 26<sup>th</sup> Office Action, Page 13, Line 17 to Page 14, Line 8 (citing Col. 6, Lines 3-17, Figure 1, and Figure 22A). Simply, the sections referred to by the January 26<sup>th</sup> Office Action describe *backing up* the digital photographs on a CD-ROM. Specifically, the introduction to the section cited by the Office Action states: "Alternatively, this method [for selecting an image] can be adapted for an operation to transfer an image file that is used for backup purposes." See, Harada, Col. 13, Lines 62-63. Transferring a digital photograph to a CD-ROM for a backup does not suggest using a network to transfer the digital photograph to a remote location for viewing by a party at the remote location.

C. Watanabe teaches purchase of a photograph, not physical merchandise shown in a digital photograph

The November 30<sup>th</sup> appeal brief demonstrated how neither Harada or Watanabe disclose or suggest the subject matter of dependent claims 15, 16, 35, 36, 55, 56, 68, 69, 78, 79, 88, and 89 and that a combination of Harada and Watanabe would therefore not provide for the subject matter recited in these claims, even if a combination of the two references was proper. In response, the January 26<sup>th</sup> Office Action first asserts that (1) Harada describes and suggests the

purchase of physical merchandise and that Watanabe discloses the capability for soliciting feedback and well as receiving feedback, which includes a purchase. January 26<sup>th</sup> Office Action, Page 16, Lines 8-11. The Office Action additionally asserts that (2) online collaboration between a sales agent and a third party is old and well known and is often used to obtain authorization to purchase. January 26<sup>th</sup> Office Action, Page 16, Lines 11-16.

With regard to the first assertion, claims 15, 16, 35, 36, 55, 56, 68, 69, 78, 79, 88, and 89 recite that the feedback includes an authorization for a purchase of the physical merchandise or a recommendation for purchase. While Harada discloses purchasing merchandise, Harada does not disclose feedback that includes an authorization for purchase or a recommendation for purchase, and therefore fails to meet the claims.

The January 26<sup>th</sup> Office Action continues to, at least implicitly, concede this point,<sup>1</sup> by asserting that Watanabe has these features, without reference to Harada. Applicant disagrees, however, with the assertion that Watanabe describes or suggests these features.

Watanabe discloses that a user can purchase photographs, not merchandise pictured in the photographs. Watanabe, Col. 4, Lines 10-12 (“[T]he system may comprise print ordering means for ordering prints of the images disclosed on the network by the group image disclosing means.”). Therefore, Watanabe does not disclose feedback that includes an authorization for purchase of the physical merchandise, as claimed. Further, Watanabe simply does not disclose feedback that includes recommendation for a purchase, as claimed.

Accordingly, neither of these references disclose or suggest the subject matter of dependent claims 15, 16, 35, 36, 55, 56, 68, 69, 78, 79, 88, and 89. As such, even if the combination of Watanabe and Harada was proper, the combination of these references does not provide for the subject matter of claims 15, 16, 35, 36, 55, 56, 68, 69, 78, 79, 88, and 89.

With regard to the second assertion, the January 26<sup>th</sup> Office Action provides no evidence to support the assertion that online collaboration between a sales agent and a third party is well known and often used to obtain an authorization to purchase. The simple assertion that this is old and well known is not sufficient to make out a *prima facie* case of obviousness. See, e.g.,

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<sup>1</sup> The portion of the Office Action rejecting these claims only refers to Watanabe having these features. January 26<sup>th</sup> Office Action, page 9, lines 5-15. As these claims are rejected under 35 USC 103, it is assumed that this rejection is based on the combination of Harada and Watanabe, and that Watanabe is described because Harada does not disclose these features.

MPEP 2142 (describing the necessity of the Examiner to come forward with evidence to make out a *prima facie* case of obviousness). To the extent that the Examiner is taking Official Notice that such online collaboration was well known as of the filing date of the present application, Applicant requests that the Examiner produce documentary evidence supporting this assertion.

### 3. Conclusion

For the reasons describe above, and for the reasons described in the November 30<sup>th</sup> appeal brief, the rejections of claims 1, 3, 4, 6-18, 21, 23, 24, 26-38, 41, 43, 44, 46-58, and 61-96 should be reversed.

Please apply the brief fee previously paid with the submission of the appeal brief filed on November 30<sup>th</sup> 2004 to the reinstatement of this appeal. Please apply any other charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

Date: \_\_\_\_\_

\_\_\_\_\_  
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### **Appendix of Claims**

Applicant incorporates by reference the appendix of claims provided in the appeal brief filed November 30, 2004.

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### **Evidence Appendix**

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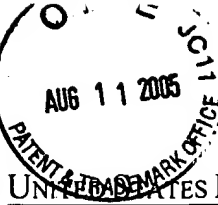
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### **Related Proceedings Appendix**

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26171	7590	07/11/2005	EXAMINER	
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DATE MAILED: 07/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.




**Notification of Non-Compliant Appeal Brief  
(37 CFR 41.37)**

Application No.

09/727,593

Applicant(s)

HASELTINE, FLORENCE P.

Examiner

Rob Rhode

Art Unit

3625

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 11 May 2005 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file a complete new brief in compliance with 37 CFR 41.37 within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer. **EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☒ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed or confirmed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☐ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

*The Brief must contain the following items--*

~~Claims Appendix~~

Evidence Appendix

Related Proceedings Appendix

The Appellant included the Appendix for claims but did not include Appendices for Evidence Appendix as well as Related Proceedings Appendix. Appellant must include these and indicated that No copies are required

*Jeffrey A. Smith*  
Jeffrey A. Smith  
Primary Examiner